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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

STANFORD INTERNATIONAL  
BANK, LTD., *et al.*,

Defendants.

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CIVIL ACTION NO. 3-09-CV 0298-N

**BRIEF OF THE EXAMINER IN RESPONSE TO THE RECEIVER'S  
THIRD INTERIM FEE APPLICATION**

TO THE HONORABLE JUDGE OF SAID COURT:

John J. Little, Examiner, submits his brief regarding the Receiver's Motion for Approval of Third Interim Fee Application and Brief in Support [Doc. No. 820]. This Response is supported by the materials contained in the Examiner's Appendix in Support of Response to the Receiver's Third Interim Fee Application.

**I. Preliminary Statement**

With his Third Interim Fee Application, the Receiver reveals that he has incurred professional fees and expenses in excess of \$38.6 million (at "discounted" rates, no less) and that he has managed to do so in less than seven months' time.<sup>1</sup> He asks this Court to award fees and expenses on this Third Application in the amount of \$8,864,327.34,<sup>2</sup> and (again) does so without

<sup>1</sup> The Receiver's two prior fee applications sought \$19.965 million (Doc. 384) and \$7.602 million (Doc. 669). The current fee application includes total professional fees and expense of \$11.080 million (Doc. 821 at 1, n.1). The period of time covered by these three applications is from February 16 (the day the Receiver was appointed) through August 31, 2009 – six months and 13 days.

<sup>2</sup> This amount is 80% of the total fees and expenses (\$11,080,409.17) incurred; the Receiver has already deducted the amount that would be "held back" pursuant to rulings made by the Court at the September 10 hearing on the Receiver's First and Second Fee Applications.

offering a shred of actual evidence to support his Application; without offering any analysis or explanation concerning any of the factors that must guide this Court's evaluation of his Application; and (seemingly) without any concern for the rate at which he and his team are burning through the already too small pile of assets available to compensate the victims of Stanford's scheme.

The Receiver's Third Application suffers from all the problems that have been addressed by the Examiner, the SEC and others in response to the Receiver's prior Applications. The Receiver asserts that each of his professional firms "was selected because it possesses special expertise required to fulfill the Court's orders," Doc. 820 at 8, but offers no explanation for what "special expertise" is being brought to the table by any of those firms. Among other things, the Receiver has yet to explain to the Court (or anyone else) why it was and is necessary to retain accounting and other professionals who must regularly travel to Houston to perform their work, all the while amassing fees and expenses for that travel (including air fares, hotel rooms, meals, cabs, dry cleaning and other expenses) that might have been avoided if the Receiver retained local firms to assist him.

Similarly, the Receiver has never offered any justification for the army of professionals that continue to pile up fees and expenses. A cursory examination<sup>3</sup> of the various invoices appended to the Receiver's Third Application reflects that the Receiver's law firms have staffed these matters in a way that no private client would tolerate, with three, four or more partners billing time as to discrete issues or events that a private client would likely insist be handled by a single partner (or senior associate). Similarly, the Receiver's accounting firms continue to use

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<sup>3</sup> A cursory examination is about all that can be accomplished without devoting hundreds of hours to the task. The Receiver has submitted over 1,000 pages of invoices in support of the Third Application. Despite the volume of this material, much of it provides little information and is almost impossible to evaluate. The Examiner addresses these issues in further detail *infra* at 4-6.

layer upon layer of professionals, each billing at increasingly higher rates, to accomplish the same task.

In making his Third Interim Fee Application, the Receiver asserts (as he has in prior applications) that all of the fees and expenses incurred are both reasonable and necessary, but does so without any substantive discussion of why he believes that to be so. Moreover, the Receiver utterly fails to explain to the Court whether and how any of these fees and expenditures have yielded a net benefit to the Estate.

For the reasons set forth in this Response, the Examiner recommends that the Court reject at least the following specific amounts sought by the Receiver's professionals through the Receiver's Third Fee Application:

<u>Firm</u>	<u>Fees</u>	<u>Expenses</u>
Baker Botts	\$243,587.30	\$128,076.92
Thompson & Knight	\$100,369.76	\$ 18,343.35
Krage & Janvey	\$ 18,400.00	\$ 0.00
FTI Consulting	\$297,096.00	\$ 501.47
FITS, Inc.	\$ 44,450.00	\$ 21,120.00
Ernst & Young	\$ 0.00	\$ 396.55
TOTALS:	\$703,903.06	\$168,438.29

There may well be other fees and expenses claimed by the Receiver that should be rejected by the Court. The Examiner will continue his review of the Receiver's Third Fee Application and will seek leave to supplement this Response as appropriate if additional problems are identified.<sup>4</sup>

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<sup>4</sup> This Response focuses largely upon the law firm invoices submitted by the Receiver. The invoices submitted by Ernst & Young, FTI and FITS, Inc. remain almost impossible to evaluate, and the Examiner adopts the objections he has previously made with respect to the invoices submitted by these firms.

**II. The Examiner Adopts Certain Objections Lodged by the SEC and by Mr. Stanford.**

The Examiner does not wish to burden the Court and the record with repetition. The Court is well aware of, and there is no real dispute concerning, the legal standards that the Court must apply in evaluating the Receiver's Third Fee Application. Those legal standards are set forth in some detail in the SEC's Response [Doc. No. 853] and are adopted by the Examiner.

Moreover, the Examiner joins and adopts certain of the objections made by the SEC in its Response, as well as certain of the objections made by Mr. Stanford in his response to the Receiver's Third Fee Application [Doc. No. 842], as follows:

a. The Examiner agrees with the SEC and Mr. Stanford that the fees and expenses set forth in the Third Fee Application simply are not reasonable. The Receiver continues to employ a veritable army of professionals and, as the Examiner demonstrates in greater detail later in this Response, seemingly does little or nothing to avoid duplications of effort – particularly by some of his most highly-compensated professionals. Moreover, the materials provided in support of the Third Fee Application demonstrate, beyond dispute, that the Receiver's lawyers are both overstaffing and overbilling this matter in a way that no private client of any of the Receiver's professional firms would accept.

b. The Examiner joins the SEC's objection that the Receiver's Third Fee Application lacks sufficient supporting documentation as to certain of the fees and expenses for which payment is sought. That is not to say that the Receiver has failed to provide a mountain of paper – his Appendix contains in excess of 1,000 pages. The problem is that these reams of paper provide precious little in the way of useful information. That is so for two separate reasons.

First, it remains impossible to determine how much the Receiver is spending on any particular task, group of tasks, or activity. While the Receiver touts the “billing conventions” instituted by his professional firms and urges that these conventions will permit the Court to determine the amount of time devoted to particular issues, Doc. 820 at 8, the reality is far different. While the various professional firms have each adopted certain billing “categories,” those categories differ from firm to firm, such that it remains impossible to determine how much the Receiver is spending on a given task. That problem is exacerbated within each firm, as time entries that seemingly belong in the same category are found in multiple different categories.

Second, the vast majority of the individual time entries contained within the Receiver’s Appendix provide little or no information that can be used to evaluate the work that is being done. This is so for several reasons. First, many of the time entries are rendered indecipherable through the redaction of critical information. *See, e.g.*, Doc. 821-3 at 266.<sup>5</sup> Other time entries are so generic that they convey no information as to what is actually being done. *See, e.g.*, Doc. 821-4 at 335.<sup>6</sup> Still other time entries are rendered useless by repetition – they are little more than boilerplate. *See, e.g.*, Doc. 821-4 at 123-4.<sup>7</sup> Given the amount of money the Receiver seeks (particularly as compared to the total funds available to the Estate), the continuing lack of

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<sup>5</sup> On this page from the Baker Botts invoice, thirteen (13) time entries reflect some seventeen (17) different redactions.

<sup>6</sup> This page from the FITS, Inc. invoice contains five different line items that read “responded to transfer issues.” The Examiner cannot determine what, if anything, the timekeeper was doing based upon this entry. Moreover, the time entries for this timekeeper suffer from an additional, and fatal, flaw – they do not reflect the time spent by the timekeeper.

<sup>7</sup> On these pages from FTI’s invoice, Michael Wei has thirty-three (33) time entries, each for 3.0 hours (at \$440/hour) during the period from June 1-26, 2009 (total billing for those entries is \$44,580). Nineteen (19) of those time entries have identical descriptions (“Review QC, sign-off, and release management of self-certification process”) while the remaining fourteen (14) contain a slightly different description (“Review QC, sign-off, and release management of stipulated partial release process.”). There is nothing in the invoice, or in the Receiver’s Application, that explains what it is that Mr. Wei was doing on these days that is worth \$44,580.

detail renders it impossible for this Court, the parties, and the Investors to give the Receiver's Fee Applications the scrutiny that is required. *Hensley v. Eckerhart*, 461 U.S. 423, 433 (1983)(fee applications must be subjected to careful scrutiny).

So that there is no confusion on this point, the Examiner is not asking for *more* information. Rather, the Examiner is asking for *better* information that will permit the Examiner, the SEC, the Investors and the Court to evaluate what is being done, who is doing it, and whether the amounts being charged are reasonable and necessary.

c. The Examiner joins Mr. Stanford in objecting that the Receiver fails entirely to address, or to provide any evidence, concerning how any or all of the *Johnson*<sup>1</sup> factors should be applied to his Third Application. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 716-717 (5th Cir. 1974). While the Receiver urges that all of the *Johnson* factors weigh in favor of approving his Third Fee Application, Doc. 820 at 7, he offers no substantive discussion of even a single factor. Similarly, he notes that “[c]ourts examine the credentials, experience, reputation, and other professional qualities required to carry out a court’s orders when assessing the reasonableness of the rates charged,” but then wholly ignores these issues. In fact, the Receiver has yet to explain in any of his fee applications what particular “credentials, experience, reputation, and other professional qualities” led him to select the professional firms he has employed.

### **III. The “Categorization” of the Receiver’s Fees Remains Less than Helpful.**

The SEC and the Examiner criticized the Receiver’s First Fee Application because it was impossible to determine how much time (and money) was being devoted to any particular task. In his Second Fee Application, the Receiver and his professional firms attempted to adopt categories to which they would bill their time. In his response to that Application, the Examiner

demonstrated that these categories were not particularly useful given that the Receiver himself, his partner, and his counsel (Mr. Sadler) had billed time spent at a single meeting (also attended by the Examiner) to four separate categories. Doc. 739 at 6-7.

The Receiver continues his effort to categorize his time entries in his Third Fee Application, but that effort continues to fall woefully short. The billing categories simply do not convey much of anything in the way of useful information to the Examiner, the SEC, the Investors or the Court. There are two fundamental problems with the billing categories that have been adopted by the Receiver's professionals.

The first is that each of the professional firms has adopted its own system of categories. The Receiver's law firm, for example, uses eight (8) billing categories. Baker Botts uses twenty two (22) categories. The Examiner cannot determine how many categories Thompson & Knight is using; the Receiver's Third Fee Application identifies five (5) seemingly substantive categories, Doc. 820 at 23-28, but the firm's invoices, Doc. 821-4 at 2-105, use wholly different categories.<sup>8</sup> FTI's invoices indicate that it is dividing its time among seven (7) different categories, Doc. 821-4 at 261; Ernst & Young apparently uses eight (8) billing categories, Doc. 821-4 at 285; and FITS, Inc. apparently is using six (6) categories. Doc. 821-4 at 418.

The second is the same problem that the Examiner identified in response to the Receiver's Second Fee Application – the Receiver's professionals do not consistently assign the work they do to a particular category. For example, Tim Durst is one of the Receiver's counsel

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<sup>8</sup> Thompson & Knight's invoices appear to identify each time entry under a particular heading, including but not limited to: "internal communications," "external communications," "written motions and pleadings," "asset analysis and recovery," "receivership administration and enforcement," "analysis and advice," and "fee application." None of those headings appear as one of the billing categories identified in the Receiver's Third Fee Application.

at Baker Botts.<sup>9</sup> He has billed time to the Baker Botts category “Insurance matters.” *See* Doc. 821-3 at 129-30 (reflecting three time entries by Mr. Durst in this category in late August). He has also billed time that relates to “Insurance matters” to other categories. *See* Doc. 821-3 at 327 (“further analysis of insurance issues; review of matters”); *see also* Doc. 821-3 at 329 and 331.

In order to determine how much time (and money) the Receiver’s lawyers have spent working on “insurance matters,” for example, one must (a) include all the time identified by Baker Botts under the heading “insurance matters,” (b) search all other Baker Botts time entries to determine (to the extent possible) whether any additional time should be assigned to “insurance matters,” and (c) search through all the Thompson & Knight time entries to determine which ones might fall within the category “insurance matters.” The evaluation of the Receiver’s fee applications should not resemble an archeological expedition; neither the parties nor the Court should be forced to excavate and assemble from the Receiver’s Fee Applications the bits of information that would permit them to evaluate whether the amounts spent by the Receiver on “insurance matters” – or any other tasks – were reasonable and necessary.<sup>10</sup>

#### **IV. Staffing, Expertise, and Professional Services**

In its Response to this Application, the SEC points out that 61 lawyers from Baker Botts and 21 lawyers from Thompson & Knight have billed time to this matter (plus a couple dozen para-professionals). Doc. 853 at 6. The SEC notes its concern with overstaffing by the Receiver’s law firms, and focuses in particular upon the Receiver’s handling of the “claw back” issue. *Id.* at 7.

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<sup>9</sup> Mr. Durst is a partner at Baker Botts and bills at the highest rate of any of the Receiver’s counsel: \$555/hour.

<sup>10</sup> The Examiner has engaged in just such an exercise with respect to several categories included within the Receiver’s Third Fee Application. The results of the Examiner’s investigation of these categories are included within this Response.

The Examiner has investigated the manner in which the Receiver's law firms have approached, staffed and billed a few relatively discrete matters and events, including the hearing held on July 31, 2009 (addressing the account freeze and "claw back" claims), the Receivership's insurance issues, and a couple of others. The results of that investigation are alarming, to say the least, and justify the rejection of significant amounts billed by Baker Botts, Thompson & Knight, and the Receiver's firm. Each of those discrete matters is addressed below.

**A. The July 31 Hearing on the Account Freeze and "Clawback" Claims.**

On July 20, 2009, the SEC filed its Emergency Motion (Doc. 613) to Modify the Amended Order Appointing Receiver, and sought to strip the Receiver's ability to file "claw back" claims against innocent investors. The Receiver filed a response to that Motion on July 30, 2009 (Doc. 657). Two days earlier, on July 28, 2009, the Receiver filed his Motion for an order establishing summary proceedings (09-724, Doc. 16) and his Motion to extend the account freeze (09-724, Doc. 18). On July 29, 2009, at approximately 3:00 p.m., the Court issued a notice<sup>11</sup> via email setting a hearing on these various Motions for Friday, July 31, 2009, at 5:00 p.m.; that is, fifty (50) hours after the notice issued. That hearing lasted a little over an hour,<sup>12</sup> during it, Mr. Sadler and the Receiver addressed the Court, as did the Examiner, two representatives of the SEC (Kevin Edmundson and Rose Romero), and counsel for Mr. Stanford and one group of Relief Defendants.

The Examiner has reviewed the invoices of the Receiver's firm, Baker Botts and Thompson & Knight to determine how the Receiver and his professionals staffed and billed for this hearing. During the three day period from July 29 through July 31, 2009, the Receiver's

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<sup>11</sup> A true copy of the Court's email notice is included within the Appendix at page 5.

<sup>12</sup> The Court's minute entry reflects that the hearing lasted for one hour and six minutes.

firm, Baker Botts and Thompson & Knight combined to bill a total of 155.50 hours in connection with the July 31, 2009 hearing, at a total cost to the Receivership of \$50,778. The lion's share of that total (133.60 hours, for \$41,571) was billed by Baker Botts. Three different partners billed time to the hearing during this three day period (Joe Cialone, Tim Durst and Kevin Sadler), as did one "special counsel" (David Arlington), one associate (Brendan Day) and three paraprofessionals (D.S. Rohleder, K. Scanlan, K.W. Hinton).<sup>13</sup>

There is no justification (and the Receiver certainly hasn't offered any) for having three partners and one "special counsel" participate in the preparation for a single argument made by a single partner at a single hearing. What is even more egregious is the amount of time billed for that hearing by those who took no active part in it. For example, during the period from July 29 through July 31, David Arlington billed a total of 33.50 hours (including 15.20 on the day of the hearing) at a rate of \$380/hour. Mr. Arlington said nothing during the July 31 hearing. Under no circumstances would it be reasonable for the Receiver to pay Baker Botts \$12,730 for Mr. Arlington's "hearing preparation and attendance." Thompson & Knight behaved no better. Two Thompson & Knight partners (Tim McCormick and Bill Banowsky) and one associate (Michael Stockham) billed a total of 11.00 hours, for \$5,187, in connection with that hearing (which Mr. Banowsky apparently attended). No Thompson & Knight attorney made an appearance at the hearing, and it does not appear (based upon the billing records) that any of the Thompson & Knight attorneys conferred with any of the Baker Botts attorneys in preparation for the hearing. The Receivership received no benefit from the "work" that Thompson & Knight billed in connection with the July 31 hearing.

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<sup>13</sup> The Examiner has included in the Appendix, at pages 13-16, a spreadsheet containing excerpts from the invoices of Krage & Janvey, Baker Botts and Thompson & Knight that document the amounts billed for this hearing. The spreadsheet specifically refers to the pages within the Receiver's appendix from which information has been excerpted.

In addition to over-staffing the hearing with partners, the billing records reflect other billing abuses to which the Receiver apparently has no objection. For example, the July 31 time entry for K. Scanlan (a Baker Botts para-professional of some sort) is for 11.50 hours (at \$140/hour, or a total of \$1,610). That entry includes such things as “transport Mr. Janvey and all counsel to courthouse and return trip to office,” and “deliver all attorneys to Love Field for return to various offices.” It is unconscionable both for Baker Botts to bill the Receivership for such things, and for the Receiver to ask the Investors to pay for what is, in essence, a \$140/hour chauffeur.

The only Baker Botts lawyer who participated in the hearing on July 31 was Kevin Sadler. He billed 23.90 hours during July 30 and 31, at a rate of \$555/hour, for a total \$13,264.50. While that amount seems high, the Examiner has no objection to Mr. Sadler’s billings, nor does he object to the amounts (\$4,020) billed by the Receiver (who appeared and spoke at the hearing) and his partner (Kristie Blumenschein) for their preparation for and attendance at the hearing. He objects to and asks the Court to reject all other amounts (\$33,493.50) billed by the Receiver’s law firms in connection with the July 31 hearing during the three days between July 29 and July 31.<sup>14</sup>

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<sup>14</sup> The Receiver’s billings for the July 31 hearing during the *three day* period between July 29 and July 31 (\$50,778) exceed the amount the Examiner and his firm billed with respect to the issues of the account freeze, the account release process and the Receiver’s “claw back” claims for the *three month* period from July 1 through September 30, 2009. During that period, the Examiner billed a total of 98.40 hours, at a cost \$41,411.00. Doc. 849 at 12-13. Just under half of that amount (45.7 hours) was billed during the three day period from July 29 through July 31, 2009, but those hours included approximately 22 hours spent researching and drafting responses to the Receiver’s Motion to Approve Summary Proceedings and the Receiver’s Motion to Extend the Account Freeze.

On the day of the hearing, the Examiner’s firm billed a total of 10.4 hours. That amount was exceeded by the individual billings of Kevin Sadler (12.30 hours), David Arlington (15.20) and K. Scanlan (11.50 hours).

## **B. The Receiver's "Insurance Matters"**

The Receiver's Third Fee Application includes time spent addressing two significant insurance matters. The first involves the rights to the proceeds of D&O policies purchased by the Stanford entities. *See, e.g.*, Doc. 538 (Motion filed by Ms. Pendergast-Holt). The second involves the assertion of a claim under Stanford's political risk policy relating to the government seizure of Stanford's Venezuelan bank. The Third Fee Application reveals that the Receiver has done little to manage his lawyers with respect to these insurance issues. Thompson & Knight and Baker Botts have largely duplicated each other's efforts; moreover, both firms have done so while seriously overstaffing the matters with partner-level professionals.<sup>15</sup>

During the period covered by the Receiver's Third Fee Application, partner-level<sup>16</sup> professionals from Baker Botts and Thompson & Knight combined to bill a total of 371.60 hours to the Receiver's "insurance matters," at a proposed cost to the Receivership of \$174,700.40. Baker Botts had six different partners<sup>17</sup> bill a total of 188.70 hours of time (at a cost of \$99,502) to "insurance matters," with three billing significant amounts of time – Tim Mountz (\$500/hr.) billed the majority, but Joe Cialone (\$555/hr.) billed over 50 hours and Tim Durst (\$555/hr.) billed over 35 hours. Thompson & Knight had six people bill a total of 182.90 hours (at a cost of

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<sup>15</sup> For the purposes of this inquiry, the Examiner has focused upon partner-level time and has not included time billed by Baker Botts and Thompson & Knight associates or para-professionals to the Receiver's "insurance matters." The Examiner may seek leave to supplement these materials with further information concerning the use of associates and para-professionals on these matters.

<sup>16</sup> Most of the timekeepers addressed in this discussion are partners. Thompson & Knight made heavy use of one "Senior Counsel" and had one other "Of Counsel" lawyer bill time on one occasion. All Baker Botts timekeepers addressed herein are partners.

<sup>17</sup> Given the number of papers filed with the Court as to these "insurance matters," the Examiner imagines that Mr. Sadler likely billed some time to this area, but the Examiner has not yet located any time entries for Mr. Sadler concerning these "insurance matters." That may be because there are none; it may also be because Mr. Sadler's time entries are so heavily redacted that it impossible to determine what he might have been doing in a given entry; or it may be that the Examiner simply hasn't found those entries among the hundreds of pages contained in the Baker Botts invoice.

\$75,198.40). Senior counsel David White billed the majority, at \$360/hour, but Tim McCormick (\$528/hr.), Bill Banowsky (\$488/hr.) and Richard Roper (\$432/hr) all billed significant amounts.<sup>18</sup>

Two conclusions are inescapable when one reviews the billing records of Thompson & Knight and Baker Botts pertaining to these “insurance matters.” First, there was no need for the Receiver to involve both these firms as to these issues – either one presumably had sufficient expertise<sup>19</sup> and personnel to handle the issues and advise the Receiver without having the other’s assistance. Second, even within one of the firms, there were entirely too many partners – with no particular insurance expertise to bring to the table – billing hours to this matter.

With respect to the billings in this area, the Examiner respectfully recommends that the Court take the following actions:

- a. that it reject in its entirety the amount (\$99,502) billed by Baker Botts partners to these “insurance matters” as it is apparent that Baker Botts was duplicating the efforts of Thompson & Knight as to these matters, and that Baker Botts brought no particular insurance expertise to bear on these matters;
- b. that it reject the amounts billed by Thompson & Knight partners other than Richard Roper<sup>20</sup> and David White; that is, that it reject the amounts billed by Tim

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<sup>18</sup> The Examiner has included in the Appendix, at pages 18-44, a spreadsheet containing excerpts from the invoices of Baker Botts and Thompson & Knight that document the amounts billed to “insurance matters.” The spreadsheet specifically refers to the pages within the Receiver’s appendix from which information has been excerpted.

<sup>19</sup> Of the twelve partner-level lawyers who billed time to “insurance matters” during the June 1 through August 31 time period, only one – Mr. David White, from Thompson & Knight – identifies insurance law as an area of expertise or specialty in the biography that appears on his firm’s website. The word “insurance” appears in none of the other lawyers’ bios.

<sup>20</sup> The Examiner does not object to the time billed by Mr. Roper on these “insurance matters” as it appears (at least to the Examiner) that Mr. Roper is coordinating the efforts of Thompson & Knight with respect to its representation of the Receiver, and particularly with respect to its efforts to assert a claim relating to the Venezuelan bank.

McCormick (\$9,873.60), Bill Banowsky (\$17,080.00), M. Marmolejo (\$720.00) and Rhett Campbell (\$580.00).

Accordingly, the Court should reject at least \$127,755.60 of the amount sought by the Receiver with respect to his lawyers' handling of his "insurance matters."

**C. The "Account Review" Process**

The handling of the Receiver's "account review" process presents another example of unreasonable overstaffing and overbilling by the Receiver's counsel at Baker Botts.<sup>21</sup> Billings for this process are found (for the most part) under the Baker Botts category for "Brokerage and Trust Matters." Doc. 821-3 at 43. Within just a few pages, it is apparent that Baker Botts had a host of professionals billing in this category (to which Baker Botts bills 1,409 hours on this Application), and that there are entirely too many partners, and other professionals, "engaged" in the process of reviewing Investor accounts.

Among the professionals who bill time to the review of Investor accounts are four partners: Tony Davis (\$555/hr.), Joe Cialone (\$555/hr.), Steve Massad (\$555/hr.) and Craig Adams (\$440/hr.). David Arlington, a Baker Botts "special counsel" (\$380/hr.) also bills significant time to the effort, as do associates Brendan Day (\$260/hr.), Mike Myers (\$260/hr.) and Andrew York (\$212/hr.), along with several para-professionals. *See* Doc. 821-3 at 43-79.

Before moving to an examination of the Baker Botts billing records in this area, it is important to have a factual context. In April 2009, there were approximately 4,000 Investor accounts that remained subject to this Court's account freeze. *See* Doc. 336 at 15. By June 1, 2009, there were less than 1,700 Investor accounts that remained frozen because the Receiver

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<sup>21</sup> There are also significant problems with the billings of FTI and FITS with respect to the account review process.

believed that the account holders had received CD proceeds.<sup>22</sup> During the period covered by the Third Fee Application, approximately forty (40) Investors entered into written stipulations<sup>23</sup> with the Receiver to obtain the release of their brokerage accounts. Pursuant to those stipulations, the Investors agreed to let the Receiver retain the amounts he claimed subject to a future adjudication of his claims. Those Investors are now “relief defendants” in the Receiver’s “claw back” actions. (09-724, Doc. 15 at 27). Thus, during the period covered by the Third Application, the Receiver was analyzing and addressing release stipulations (or arrangements) for no more than the 1,700 accounts that remained frozen at June 1, 2009.

The Examiner directs the Court’s attention to the billing entries of two people – Baker Botts associate Brendan Day and para-professional J.C. Huddleston. The billing entries of Mr. Day are remarkable. During a two month period from June 1 through July 29, Mr. Day billed 359.50 hours, at a cost of \$93,470.<sup>24</sup> Mr. Day’s time entries are all<sup>25</sup> virtually identical, and include some or all of the following language:

- i. "Created stipulations for a partial release of funds in account holders' Pershing accounts; reviewed and analyzed documents and conferred with financial team members to create such stipulations;" and/or
- ii. "Reviewed account holders' accounts for partial, full, or de minimus releases."

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<sup>22</sup> This information is derived from account release reports that the Receiver was furnishing to the Examiner on a regular basis during May, June and early July.

<sup>23</sup> It is worth recalling that the written account release stipulations were substantially simplified by an Order entered by the Court on June 17, 2009. Doc. No. 484.

<sup>24</sup> The Examiner has included in the Appendix, at pages 46-52, a spreadsheet containing excerpts from the invoices of Baker Botts that reflect Mr. Day’s time entries, including one (on June 25, 2009) that inexplicably appeared under a different billing category even though it is identical to the entries that precede and follow it. The spreadsheet specifically refers to the pages within the Receiver’s appendix from which information has been excerpted.

<sup>25</sup> There are only three time entries by Mr. Day over the two month period that include some additional language.

The Examiner is certainly skeptical about Mr. Day's time entries, particularly considering that (a) there were only forty (40) or so "stipulations for a partial release" ever executed, and even fewer *de minimus* account releases; (b) Andrew York also billed significant time to the preparation of "stipulations for partial account release" on seventeen days in June and an additional five days in July; and (c) David Arlington was largely responsible for overseeing the process of negotiating and securing the execution of account release stipulations.

During the two month period covered by Mr. Day's time entries, David Arlington billed approximately 102 hours (at \$360/hr.) to the process of reviewing and releasing Investor accounts, Mike Myers billed approximately 180 hours (at \$260/hr.) and Andrew York billed approximately 207 hours (at \$212/hr.) to the same general tasks.<sup>26</sup> Doc. 821-3 at 43-79. If Mr. Day actually spent almost 360 hours over the same two months dealing with account review and release stipulations, then there was a large amount of duplicative work being done by Baker Botts as to this issue.

The time entries of Mr. (or Ms.) Huddleston are equally remarkable. During the month of June, he billed 71.60 hours, at a cost of \$10,596.80 (at a rate of \$148/hr.) to what appears to be little more than clerical record-keeping.<sup>27</sup> Without exception, his time entries in June contain some or all of the following language:

"Maintained and updated account holder Stipulated Partial Release Summary information for attorney review; prepared ARS reports and account holder confirmations for attorney review; reviewed and compiled list of outstanding accounts; corresponded with FITS regarding same."

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<sup>26</sup> Mr. Myers appears to have focused most of his efforts on the accounts that were held at Stanford Trust Company, and also devoted some energy to the effort to transfer accounts in bulk from Pershing LLC to Dominick & Dominick, LLC.

<sup>27</sup> The Examiner has included in the Appendix, at pages 54-56, a spreadsheet containing excerpts from the invoices of Baker Botts that reflect Mr. Huddleston's time entries. The spreadsheet specifically refers to the pages within the Receiver's appendix from which information has been excerpted.

As noted above, there were approximately forty (40) “stipulated partial releases.” It is inconceivable that 71.60 hours were required simply to track those documents. Moreover, all his time entries describe a clerical function – not one that requires a professional billing at \$140.00/hr.

With respect to the Baker Botts billings in this area, the Examiner respectfully recommends that the Court reject the amounts billed by Baker Botts for the work of Brendan Day and J.C. Huddleston in their entirety, for a total amount rejected of \$104,066.80.

**D. The “Sea Eagle” and the “Little Eagle”**

As the Court knows, the Receiver has custody of two yachts, the “Sea Eagle” and the “Little Eagle.” *See* Docs. 743 (Motion to Sell “Little Eagle”); 796 (Motion to Sell “Sea Eagle”). It appears that the Receiver has relied heavily upon his partner, Ben Krage, with respect to the legal matters that concern these two yachts. Mr. Krage is described as the “senior litigation partner” of the Receiver’s law firm on the firm’s website. Therein lies the problem with Mr. Krage’s billings for his work with these two yachts – it does not appear (and the Receiver certainly has made no effort to establish) that Mr. Krage has any particular expertise or experience in dealing with these sorts of assets. As a consequence, the Examiner believes that Mr. Krage has billed entirely too much time, at entirely too high a rate, to the Receiver’s dealings with Stanford’s two yachts.

Mr. Krage’s billing records reflect that he devoted over 83 hours, at a cost of over \$35,000, to matters relating to these two vessels during the three month period covered by the Third Fee Application.<sup>28</sup> To put that number in perspective, the Receiver has moved to sell the

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<sup>28</sup> The Examiner has included in the Appendix, at pages 58-62, a spreadsheet containing excerpts from the invoices of Krage & Janvey that reflect the time entries of Mr. Krage and Mr. Janvey with respect to these vessels. The spreadsheet specifically refers to the pages within the Receiver’s appendix from

“Little Eagle” for approximately \$150,000. Mr. Krage has already incurred fees equal to almost 25% of that amount, even though the motion has not been granted, the boat has not been sold, and there likely will be more to do with respect to the sale of that vessel when it finally occurs.<sup>29</sup>

While the Examiner understands that there likely were things that needed to be done with respect to these two yachts, there is no evidence that those things were best done by Mr. Krage (at his rate of \$425/hr.), nor that Mr. Krage has any particular expertise in dealing with such vessels, nor that any or all of these issues required legal attention (as opposed to attention from a yacht broker or the captains of the vessels). In fact, Mr. Krage’s billing entries demonstrate his lack of expertise with respect to these matters. The Receiver apparently entered into a short-term lease with the prospective buyer of the “Little Eagle.” *See* Doc. 743 at 3. Mr. Krage’s spent considerable time trying to “locate” a form of lease that he could use to document this short-term lease, Doc. 821 at 24-25; moreover, he billed time working on this short-term lease repeatedly over the course of almost two weeks. *Id.* at 24-27. Experienced counsel billing at \$425 per hour ought not have to spend days trying to “locate” a form in order to document a short-term lease, but that is precisely what has occurred here.

With respect to this matter, the Examiner respectfully suggests that the fees sought should be significantly discounted, by 50% or more, and urges the Court to reject at least \$17,500 of the fees sought by Krage & Janvey for Mr. Krage’s work on these vessels.

**E. Billing for Work that Appears Clerical**

There are a number of instances within the billing records of the Receiver and his law firms where it appears that legal professionals (and para-professionals) are billing for what

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which information has been excerpted. The Examiner does not object to the amount (\$977.50) billed by Mr. Janvey to this matter.

appears to be clerical and administrative work. The Examiner has already identified one example – the billings by J.C. Huddleston in connection with the Receiver’s account review process. Other examples follow:

### 1. Wire Transfers

The invoice from the Receiver’s law firm indicates that one of its lawyers has billed time for overseeing wire transfers. Specifically, Valerie Thompson has billed a total of 4.5 hours (at \$200/hr.) for work that is described as “address wires” or “process wires.”<sup>30</sup> While the amount billed (\$900) is not particularly significant in the context of the Receiver’s Third Fee Application, it is nevertheless important that professionals not bill at professional rates for work that is either clerical or administrative. Accordingly, the Court should reject \$900.00 billed by Krage & Janvey for Ms. Thompson’s efforts to “address” and/or “process” wire transfers.

### 2. “Bundles”

The invoice from Baker Botts reflects that its London-based professionals billed a total of 37.90 hours, at a cost of \$11,712.00,<sup>31</sup> to copying, scanning, emailing and paginating “bundles”<sup>32</sup> that were to be used in certain proceedings in the United Kingdom. The Receiver offers no explanation for why it is appropriate to pay \$11,712.00 for services (copying, scanning, emailing

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<sup>29</sup> To make matters worse, Mr. Krage billed approximately forty (40) hours for other work on these two yachts as a part of the Receiver’s Second Fee Application.

<sup>30</sup> The Examiner has included in the Appendix, at page 64, a spreadsheet containing excerpts from the invoices of Krage & Janvey that reflect the time entries of Ms. Thompson with respect to these wires. The spreadsheet specifically refers to the pages within the Receiver’s appendix from which information has been excerpted.

<sup>31</sup> The Examiner has included in the Appendix, at pages 66-67, a spreadsheet containing excerpts from the invoices of Baker Botts that reflect the time entries with respect to these “bundles.” The spreadsheet specifically refers to the pages within the Receiver’s appendix from which information has been excerpted.

<sup>32</sup> The Examiner understands (in general terms) that the term “bundle” refers to a compilation of documents submitted to the English courts, typically containing submissions from all parties that are pertinent to the matter under consideration.

and paginating) that are almost entirely clerical. The Court should reject the \$11,712.00 billed by Baker Botts for these services.

**V. The Investors Should Not Pay for Professionals' Efforts to Get Paid.**

Both the Receiver and the Examiner agree that the estate should not be billed for time spent in the preparation of their respective fee applications. *See, e.g.*, Doc. 754 at 11, n.4 (Receiver agreed not to charge Estate for time spent preparing fee applications). Despite this understanding, the Thompson & Knight invoices submitted in support of the Receiver's Third Application contain over \$40,000 in charges for time that was spent (a) preparing materials for the Receiver's fee applications, and (b) reviewing and responding to the objections that were received to those fee applications. Thompson & Knight has included 121.30 hours, at a cost of \$43,924.60, for its efforts in connection with the Receiver's fee applications. *See* Appendix at 69-75.<sup>33</sup> The Court should reject the \$43,924.60 billed by Thompson & Knight with respect to the preparation of the Receiver's fee applications.

**VI. Other Problems with Law Firm Billings**

The invoices submitted by Thompson & Knight and Baker Botts reflect a number of other discrete problems that are addressed in summary fashion below:

- Thompson & Knight's invoice includes \$23,004.40 for time that predates June 1, 2009. Doc. 821-4 at 4-6. The Receiver's application contains no mention of this time, offers no justification for why it was not billed in the Receiver's First or Second Applications, and wholly fails to justify payment for this time. It should be rejected in its entirety.

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<sup>33</sup> The Examiner has included in the Appendix, at pages 69-75, a spreadsheet containing excerpts from the invoices of Thompson & Knight that reflect time entries for work done in the preparation and presentation of the Receiver's Fee Applications. The spreadsheet specifically refers to the pages within the Receiver's appendix from which information has been excerpted.

- The Thompson & Knight invoice bills for \$18,343.35 in wholly unspecified travel. Doc. 821-4 at 80. It also contains a number of specifically described charges for travel, *id.* at 79-80, and the Receiver offers no explanation for the failure to identify the specific charges that give rise to this amount. It should be rejected in its entirety.

- The Baker Botts invoice contains wholly unspecified charges for “computer research services” (\$52,544.98), “delivery services” (\$22,857.31), and “Photocopying service” (\$52,674.93). Neither Baker Botts nor the Receiver explain how or why these expenses were incurred. With respect to the “computer research service,” are these charges over and above the monthly charges that Baker Botts pays to WestLaw and/or Lexis?<sup>34</sup> With respect to the “delivery services,” what was being delivered, to whom, and why? As for the “Photocopying service,” were these charges from a third party vendor that are being passed on to the Receiver, or are these internal Baker Botts charges for work done on its copying machines?<sup>35</sup> The Court should reject the entirety of these expenses (\$128,077.22) until further information is provided.

#### **VII. Specific Objections to the Bills of Ernst & Young, FTI and FITS, Inc.**

As noted above, the invoices issued by Ernst & Young, FTI and FITS, Inc. still provide little that can be coherently evaluated by the Examiner. Nevertheless, the Examiner notes that there he has certain objections to the invoices issued by each of those firms.

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<sup>34</sup> In response to an inquiry from the SEC, the Examiner was able to segregate (and charge) only the amount his firm was charged for WestLaw research that fell outside of his monthly contract with that service (as opposed to the amount his firm allocated to this matter from its monthly WestLaw contract costs). Baker Botts should do the same, and charge only for those amounts that fall outside the firm’s monthly service contract.

<sup>35</sup> If some or all of these photocopying services were provided by Baker Botts using its in-house facilities, the Court is entitled to know the rate Baker Botts is charging for copies.

**A. Ernst & Young**

The Receiver offers no explanation for why he requires ten (10) Ernst & Young partners, each billing at the “discounted rate” of \$532/hour, to accomplish whatever tasks are currently being handled by Ernst & Young, nor does he explain why thirty-five (35) Ernst & Young professionals are still required to accomplish whatever it is that Ernst & Young is doing for the Receiver. Doc. 821-4 at 282. While it may be standard practice for accounting firms to use four or five layers of professionals, this engagement is not (and ought not be) handled pursuant to any such “standard practice.” Similarly, the Receiver has never addressed the issue raised by the Examiner in response to his Second Fee Application – why is it appropriate to spend so much money to reconstruct financial statements for entities that (a) have ceased to operate, and (b) are all alleged to be part of a massive fraud?<sup>36</sup>

In addition, the Examiner objects to the payment of travel expenses to Ernst & Young professionals who apparently reside in or around Houston. While the amount in question is small (\$396.55), Doc. 821-4 at 324-326, it ought not be paid. It is bad enough that the Receiver has decided to pay hundreds of thousands of dollars in travel expenses to financial professionals who are traveling to and from Houston on a regular basis; he ought not also have to reimburse Ernst & Young for “travel expenses” for its employees who are resident in Houston.

**B. FTI Consulting, Inc.**

The Examiner has the same objection to FTI that is stated above as to Ernst & Young – the Receiver offers no explanation for why he continues to require forty-five different

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<sup>36</sup> The Ernst & Young invoice includes 1,479.8 hours of “advisory” services and 939.0 hours of “tax” services. Of the “advisory” services, 1,394.3 hours are attributed to the preparation of financial statements. Doc. 821-4 at 285.

professionals from FTI, Doc. 821-4 at 110, to do whatever it is that FTI is doing for the Receiver. The Examiner also has the following specific objections with respect to the time entries of FTI:<sup>37</sup>

- As noted earlier, *supra*, n.7, Michael Wei bills \$44,580 for thirty-three (33) essentially identical time entries, each for 3.0 hours, between June 1 and June 26. Under no circumstances can the Examiner or the Court conclude that the amount charged for Mr. Wei's work, whatever it actually was, is reasonable and necessary. The entire amount should be rejected.

- Nicole Donnelly bills a total of 127.30 hours, at a cost of \$45,828.00, for work that is described (with only one exception) as follows:

“Reconcile SharePoint, collected data and bluesheets.”

Doc. 821-4 at 144. The Examiner has no idea what work is being described; the Receiver has offered nothing to explain or justify it; and the Court should reject it in its entirety.

- Scott Sizemore bills a total of 292 hours between June 2 and July 21, at a total cost of \$91,104, and describes each time entry in virtually identical fashion. Doc. 821-4 at 152-157. The Examiner cannot determine what Mr. Sizemore was doing; the Receiver again offers nothing to explain or justify his efforts; and the Court should reject the entire amount billed.

- Patrick Beeman bills a total of 412.80 hours between June 1 and July 31, 2009, at a cost of \$115,584.00, Doc. 821-4 at 163-169, and an additional 133.90 hours, at a cost of \$37,492.00. *Id.* at 239-240. All of the time entries begin with the phrase “Project Ebony.” The Examiner has no idea what “Project Ebony” might be, nor has the Receiver explained what it is,

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<sup>37</sup> Similar objections could be lodged to the time entries of a number of other FTI professionals. Many of them regularly use “boilerplate” descriptions of the work they are performing, rendering any meaningful evaluation of that work, its reasonableness or necessity virtually impossible.

why Mr. Beeman was working on it, or why the Investors ought to pay for it. The Court should reject the entire amount billed.

Finally, the Examiner renews his objection to the Receiver's decision to retain FTI and to incur thereby hundreds of thousands of dollars in travel expenses for FTI's professionals. The Receiver has never explained what particular expertise FTI provides to him, nor why he could not find a local firm capable of performing the same tasks.<sup>38</sup>

**C. FITS, Inc.**

In this Fee Application, the Receiver still does not explain precisely what it is that FITS is doing, nor does he explain how its activities are somehow different from those of FTI. In that regard, the Examiner notes that Jose Santana, of FITS, billed 170 hours between June 4 and June 26, at a cost of \$29,881.25, for work that sounds very much duplicative of work also done by FTI and by Baker Botts. Mr. Santana describes all of those hours identically, as follows:

“Stipulated Partial Release (SPR): [Redacted] This review was completed to negotiate a partial release of the brokerage account to the account holder.”

Doc. 821-4 at 365-367. The Court should reject the entire amount billed to this description.

Additionally, the Receiver still has not explained why it was appropriate to retain FITS given that all of its personnel have to travel to Houston at great expense to the Receivership.

The Examiner notes that FITS has done a better job<sup>39</sup> of describing the tasks that it is attempting to accomplish; however, those descriptions make it clear that some of the work that FITS is doing is largely clerical and/or administrative. Such work does not need to be done by

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<sup>38</sup> The Examiner notes that FTI personnel have charged \$501.47 for “dry cleaning” charges within the various travel expenses for which payment is sought. The Investors ought not be charged for any “dry cleaning” – these charges should be rejected.

<sup>39</sup> Unfortunately, some of the pages in the FITS invoice provide absolutely no information concerning the amount of time that has been billed. *E.g.*, Doc. 821-4 at 335-340.

someone billing \$175/hour (or more), nor should the Receivership be paying travel expenses to get such work accomplished. For example, Mr. Santana billed a total of 83.25 hours, Doc. 821-4 at 371, 433, at a cost of \$14,568.75, to create images of actual SIB CDs. All of that work is described identically, as follows:

“Physical SIBL CDs imaged to maintain in-house inventory (image database) of SIBL CDs.

There is no reason that a professional charging \$175 per hour needs to travel from New York to Houston (at Receivership expense) to run a scanner (or, perhaps, a copy machine with a scanner function). The Court should reject the entire amount billed to this task.

Finally, the Examiner renews his objection to the payment of a “per diem” to each of the FITS employees, apparently at the rate of \$60 per day for each day they are on the road. FITS is free to pay its employees a “per diem” if it chooses to do so, but there is no reason that the Receivership should reimburse FITS for that “per diem” in addition to paying all the other travel expenses for which it is being charged. The total “per diem” charged by FITS in this Application is \$21,120; it should be rejected in its entirety.

### **VIII. Conclusion**

The Examiner takes seriously his obligation to scrutinize the Fee Applications submitted by the Receiver and recognizes, as did the Court, that each dollar spent by the Receiver on his team of professionals is a dollar that is not available to the Investors. For the reasons set forth in this Response, the Examiner respectfully recommends that the Court deduct from the amounts sought by the Receiver in his Third Fee Application at least \$872,341.35 (of which \$703,903.06 represents fees sought by the various professional firms and \$168,438.29 represents expenses).

Respectfully submitted,

/s/ John J. Little

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**CERTIFICATE OF SERVICE**

On October 29, 2009 I electronically submitted the foregoing document to the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ John J. Little